

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EFIM GOLODETZ, JOACHIM GINZBERG,  
LEO ELIASH, MARC L. GINZBERG,  
OSCAR GOLODETZ and DAVID GINZBERG  
d.b.a.  
NAMARIB COMPANY

Claim No. CU - 1817

Decision No. CU - 6259

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Lucas, O'Connell, Friedman and Mann  
By Joseph B. Friedman, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,080,000.00, was presented by NAMARIB COMPANY based upon the asserted loss of a stock interest in a Cuban corporation. The record shows that NAMARIB COMPANY, hereafter called claimant, is a partnership organized under the laws of New York, and that at all pertinent times all of its partners have been nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of the Act. (See Claim of The Cuban Plantation Company, Claim No. CU-0093.)

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record includes a copy of a report of March 12, 1964 on Form TFR-607 (Report of Property of Cuban nationals) to the Treasury Department concerning claimant's stock interest in Central San Jose Portugalete, S.A. (Portugalete); copies of correspondence relating to that report to the Treasury Department; a copy of claimant's balance sheet as of December 31, 1955; a copy of a decision by the Tax Court in the case of Rosenthal, et al., v. Commissioner (48 TC No. 50, CCH Dec. 28, 533 (1967)), involving a tax deduction for claimant's stock interest in Portugalete; and statements from claimant and counsel. It appears that claimant's stock certificates were left in Cuba.

On the basis of the entire record, the Commission finds that claimant owned 406 shares of stock in Portugalete. The Commission further finds that on October 13, 1960 Portugalete was nationalized by Cuba pursuant to Law 890.

Since Portugalete was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of such ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost or replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant asserts that its 406 shares of stock in Portugalete had a value of \$1,080,000.00. It states in its official claim form that Portugalete owned a sugar mill, its principal asset, which was valued at \$3 million, and therefore its 406 shares out of a total of 1,125 had a value of \$1,080,000.00. In support thereof, claimant submitted a copy of an affidavit of October 20, 1967 from Domingo Bures, one of the stockholders of Portugalete, which reads as follows:

I, Domingo Bures, wish to certify that during September 1958 a group headed by the prominent attorney, Mr. Oscar Gans, of Havana, offered Central San Jose Portugalete, S.A. three million (\$3,000,000) dollars for their entire business.

I submitted this offer to all of the stockholders of Portugalete, and we all decided the offer was insufficient.

Claimant has also submitted a copy of a balance sheet for Portugalete as of June 30, 1958. The record includes a copy of a letter of October 20, 1967 to counsel from JOACHIM GINZBERG, one of the partners in claimant, in which he states that the balance sheet for Portugalete as of June 30, 1959 is being held by the Tax Court. In response to suggestions from the Commission that a copy of the June 30, 1959 balance sheet be submitted, counsel stated in his letter of May 11, 1971 that said balance sheet is no longer available to claimant, having been retained by an attorney who has emigrated to Europe. Counsel's letter was accompanied by an affidavit of May 10, 1971 from JOACHIM GINZBERG, stating that there was no substantial difference between the 1958 and 1959 balance sheets for Portugalete; and that other documents, such as profit and loss statements, are not available.

The balance sheet as of June 30, 1958 shows Portugalete's financial condition as follows, the Cuban peso being on a par with the United States dollar:

ASSETS

Current Assets

Cash on Hand and in Banks	\$	1,797.87	
Accounts Receivable		665,886.25	
Inventories		<u>470,886.79</u>	
Total Current Assets			\$1,138,550.91

Deferred Charges

Insurance Premiums not due		7,907.25	
Consumption Tax Stamps for Refined Sugar		2,553.00	
Deposits in Guarantee		182.00	
Tax on Gross Sales		<u>608.44</u>	
Total Deferred Charges			11,250.69

Fixed Assets

Lands		72,000.00	
Mill Equipment	\$1,167,999.63		
Less: Reserve for Depreciation	<u>398,996.76</u>		
		769,002.87	
Distillery Equipment	\$ 57,864.93		
Less: Reserve for Depreciation	<u>26,777.73</u>		
		31,087.20	
Refinery Equipment	\$ 548,941.94		
Less: Reserve for Depreciation	<u>83,985.95</u>		
		464,955.99	
Irrigation		16,129.43	
Rights and Shares		1,800.00	
Investment		<u>39,600.00</u>	
Total Fixed Assets			<u>1,394,575.49</u>

TOTAL ASSETS

\$2,544,377.09

LIABILITIES AND CAPITAL

Current Liabilities

Bank Overdraft	\$	469,649.65	
Accounts Payable		829,682.14	
Deferred Credits		<u>657.77</u>	
Total Current Liabilities			\$1,299,989.56

Capital

Capital		\$1,125,000.00	
Surplus:			
From Previous Years	\$	109,831.07	
Profit Taxes 1957		<u>16,892.45</u>	
	\$	92,938.62	
Profits during this period		<u>26,448.91</u>	
		119,387.53	
TOTAL CAPITAL			<u>\$1,244,387.53</u>

TOTAL LIABILITIES AND CAPITAL

\$2,544,377.09

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On its face, the above balance sheet indicates that Portugalete had a net worth of \$1,244,387.53, equivalent to \$1,106.1222 for each of its 1,125 shares of outstanding capital stock. Based upon that valuation, claimant's 406 shares appear to have had a value of \$449,085.61. The Commission suggested the submission of further evidence to support claimant's asserted valuation. Counsel's response was in the form of a letter of May 11, 1971, accompanied by the said affidavit of May 10, 1971 from JOACHIM GINZBERG and the 1967 decision of the Tax Court.

The following appears from the facts recited in that decision. Claimant acquired its stock interest in Portugalete in 1951 for \$265,000.00. At that time, Portugalete owned "approximately 8,000 to 9,000 acres of land on which sugar cane was grown and a sugar mill in which raw sugar was ground." Portugalete had no refinery until 1953 when an idle refinery was purchased. The refinery was dismantled, moved to the site of the mill in Havana Province, Cuba, and operations commenced in 1955.

It is noted that the balance sheet of July 30, 1958 shows a value of \$72,000.00 for the land. Information available to the Commission discloses that sugar growing land values in Cuba ranged from \$4,000.00 to \$7,000.00 per caballeria, a caballeria being equivalent to 33.162 acres. While the precise amount of sugar growing land owned by Portugalete is not shown by the record, it appears from the decision of the Tax Court that it was 8,000 to 9,000 acres. Thus Portugalete owned approximately 241.24 to 271.395 caballerias of land. The Commission finds that Portugalete owned 256.318 caballerias of land having a value of \$5,500.00 per caballeria, or \$1,409,749.00. The Commission also notes that Portugalete's mill and refinery constituted a going business which had been operating for 5 years as of the date of loss.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the amount asserted by claimant. Accordingly, the Commission finds that the value of Portugalete on October 13, 1960, the date of loss, was \$3,000,000.00. Therefore, each of the 1,125 shares of its outstanding capital stock had a value of \$2,666.6666, and claimant's 406 shares had a value of \$1,082,666.64.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimant as to the extent thereof.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest shall be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim, it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that EFIM GOLODETZ, JOACHIM GINZBERG, LEO ELIASH, MARC L. GINZBERG, OSCAR GOLODETZ and DAVID GINZBERG d.b.a. NAMARIB COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Eighty-Two Thousand Six Hundred Sixty-Six Dollars and Sixty-Four Cents (\$1,082,666.64) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**JUL 7 1971**

*Paul H. Gassler*  
~~Paul H. Gassler, Secretary~~  
*Theodore Jaffe*  
~~Theodore Jaffe, Secretary~~

NOTICE TO TREASURY: These claimants may be the subject of Certifications of Loss in other claims, as follows:

1. EFIM GOLODETZ is claimant in CU-1816; is one of the partners in Intercontinental Affiliates, claimant in CU-1819; and is a partner in M. Golodetz & Co., claimant in CU-1820.

2. JOACHIM GOLODETZ is a partner in claimants in CU-1819 and CU-1820.

3. LEO ELIASH is one of the beneficiaries of Trust #1, claimant in CU-1818; and is a partner in claimants in CU-1819 and CU-1820.

4. MARC L. GINZBERG is a partner in claimants in CU-1819 and CU-1820.

5. OSCAR GOLODETZ is a partner in claimants in CU-1819 and CU-1820.

6. DAVID GINZBERG is a partner in claimants in CU-1819 and CU-1820.

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The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)